## UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA	)
V.	) Case No. 16-cr-10137-LTS
KENNETH BRISSETTE and TIMOTHY SULLIVAN	) ) )

## DEFENDANTS' MOTION IN LIMINE TO EXCLUDE STATEMENTS OF KENNETH BRISSETTE

The government intends to present the testimony of Special Agent Kristen Koch to testify about statements made by defendant Kenneth Brissette on July 30, 2015. The statements the government seeks to admit should be excluded because they are irrelevant to the issues at trial and are unfairly prejudicial to the defendants.

The statements, which were made on July 30, 2015, pertain solely to incidents involving the reality television series Top Chef and its dispute with Teamsters Local 25 that occurred in June of 2014. See Tab A (Brissette 302). The questioning of Mr. Brissette focused exclusively on Top Chef as the Boston Calling investigation had yet to begin. While this Court has allowed the jury to hear Top Chef-related evidence for the limited purpose of evaluating Mr. Brissette's knowledge and intent with respect to the issues with Crash Line Productions that form the basis of the pending charges, Mr. Brissette's statements were made nearly one year after the events giving rise to the charges in this case and are not probative of Mr. Brissette's knowledge or intent between May 1, 2014 and September 30, 2014, which is the time period relevant to this trial. For that reason alone, the statements should be excluded under Fed. R. Evid. 401.

The statements are also unfairly prejudicial under Fed. R. Evid. 403. A limiting instruction cannot cure the unfair prejudice of allowing the jury to hear backward-looking statements made by Mr. Brissette about the Top Chef incidents a year after they occurred, particularly when the statements themselves have no probative value. Moreover, the content of the statements are unfairly prejudicial because, during his interview, Mr. Brissette expressed regret for the Top Chef situation generally. While such statements are natural and understandable, the government apparently intends to use them to argue around the Court's limiting instruction – that is, the government seeks to use Mr. Brissette's statements to suggest (or even overtly argue) that the jury should draw an unsupported and inaccurate inference that Mr. Brissette's conduct was criminal or wrongful – despite the undisputed fact that Mr. Brissette has never been charged with any wrongdoing in connection with Top Chef.

Mr. Brissette's 2015 statements should also clearly be excluded as to Mr. Sullivan. These statements do not pertain to Mr. Sullivan and have no bearing on Mr. Sullivan's knowledge and intent with respect to the charged events. As a result, the statements are not relevant and are unfairly prejudicial as to him because there could be no plausible purpose for their admission except to inappropriately suggest to the jury first that Mr. Brissette's conduct was wrongful, and then to incorrectly impute that finding onto Mr. Sullivan.

For these reasons, the defendants request that the Court exclude evidence concerning the statements Mr. Brissette made to the government on July 30, 2015.

## Respectfully submitted,

KENNETH BRISSETTE, By his attorneys,

/s/ William H. Kettlewell
/s/ Sara E. Silva
/s/ Courtney Caruso
William H. Kettlewell (BBO #270320)
Sara E. Silva (BBO #645293)
Courtney A. Caruso (BBO #687642)
HOGAN LOVELLS US LLP
100 High Street, 20th Floor
Boston, MA 02110
(617) 371-1000
(617) 371-1037 (fax)
bill.kettlewell@hoganlovells.com

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sara.silva@hoganlovells.com

courtney.caruso@hoganlovells.com

TIMOTHY SULLIVAN By his attorneys,

/s/ William J. Cintolo /s/ Thomas R. Kiley /s/ Meredith Fierro

William J. Cintolo (BBO #084120)
Thomas R. Kiley (BBO #271460)
Meredith Fierro (BBO#696295)
COSGROVE EISENBERG & KILEY
One International Place, Suite 1820
Boston, MA 02110
(617) 439-7775
(617) 330-8774 (fax)
wcintolo@ceklaw.net
tkiley@ceklaw.net
mfierro@ceklaw.net